IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 87 of 2006
Date of decision 22.1.2007

The Commissioner of Central Excise, Jalandhar. .. Appellant

Versus

M/s Osaka Alloys and Steels Pvt. Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE VINOD K. SHARMA

PRESENT: Mrs.Daya Chaudhary, Asstt. Solicitor General for the appellant
Mr.O.P.Goyal, Sr. Advocate with
Ms. Mamta B. Jain, Advocate.

M.M.Kumar, J.

The revenue has filed the instant appeal under Section 35(G) of the Central Excise Act,1944 on the basis of the order dated 19.7.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in appeal No. E 525 04-C. The following substantial questions of law have been sought to be raised:

" i) Whether the respondent, having once exercised the option to work under Rule 96 ZP(3) on 9.9.1997, can change their option within the same financial year especially when the law on the point stands decided by the Hon'ble Supreme Court in UOI v. Supreme Steels and General Mills 2004 (133) ELT 513 (SC) ?;

ii) Whether after the proceedings under the compounded levy scheme have been initiated by the appellant and provisional annual capacity of the respondent fixed, any action taken regarding duty liability on the respondent by a subordinate officer can come in the way of the finalization of such proceedings ? ;

iii) Whether the ld. Tribunal is correct in holding that finalization of provisional annual capacity dated 21.11.1997 cannot be effected unless the show cause notice dated 1.4. 98 is first decided upon ?; and

iv) Whether the ld. Tribunal is correct in holding that the hearing notice dated 20.9.01 amounted to a second show cause notice when the same was issued by way of giving an opportunity of hearing before finalising the provisional annual capacity order dated 21.11.1997 of the appellant?"

It remains undisputed that a show cause notice dated 1.4.1998 under Rule 96 ZP (1) of the Central Excise Rules, 1944 (for brevity 'the Rules') was issued raising demand for duty for the disputed period . Another notice dated 20.9.2001 raising demand of duty in respect of the same period once again was issued. In the afore-mentioned facts and circumstances, the Tribunal held that once a show cause notice for payment of duty in terms of Rule 96 ZP(1) of the Rules was issued then the same was required to be adjudicated and till then no second notice raising demand of duty in respect of the same period could be issued and that too after a lapse of four years. The Tribunal referred to Rule 96ZP(3) of the Rules to support the view that second show cause notice could not have been issued and adjudicated for confirmation of duty against the assessee especially when it was time barred. It is appropriate to mention that the period in dispute is 1.9.1997 to 31.3.1998 and both the notices were issued to the assessee demanding differential duty in respect of the afore-mentioned period. According to Rules, the period of limitation for adjudication in respect of raising the demand for differential duty is six months. The first show cause notice has

not been adjudicated and the second show cause notice has been issued after about four years which is clearly time barred. Therefore, we find that no substantial question of law would arise as the second show cause notice has been found to be without jurisdiction and even otherwise time barred. The appeal is accordingly dismissed.

(M.M.Kumar)
Judge

(Vinod K.Sharma)
Judge

22.1.2007
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